

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTHONY KINARD,

Plaintiff,

v.

Case No. 05-74131
Honorable Patrick J. Duggan

JOHN S. RUBITSCHUN ET AL.,

Defendants.

OPINION AND ORDER

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on February 28, 2008.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Plaintiff, a former state prisoner, filed this *pro se* civil rights action against Defendants on October 28, 2005. On May 8, 2007, this Court issued an Opinion and Order dismissing Defendant Janette Price. On August 24, 2007, the remaining Defendants filed a motion for summary judgment and/or motion to dismiss. Plaintiff filed a response to Defendants' motion on September 6, 2007. This Court has referred all pretrial matters in this action to Magistrate Judge Steven D. Pepe.

On January 31, 2008, Magistrate Judge Pepe filed his Report and Recommendation (R&R) recommending that this Court grant Defendants' motion. With respect to Plaintiff's claims against Defendant Patricia Caruso, the Director of the

Michigan Department of Corrections, Magistrate Judge Pepe concludes that Plaintiff fails to create a genuine issue of material fact as to whether she was directly involved in either encouraging or participating in the alleged unconstitutional behavior alleged by Plaintiff. As to Plaintiff's request for injunctive and/or declaratory relief against Defendants John Rubitschun, Margie McNutt, Marianne Samper, Stephen DeBoer, and Charles Braddock, Magistrate Judge Pepe concludes that Plaintiff's request is moot as a result of his release from prison. Finally, as to Plaintiff's claims against Defendants Hugh Wolfenbarger, Joe Scott, George Cook, Cnolia Redmond, Dan Quigley, and Jim Armstrong, Magistrate Judge Pepe finds that Plaintiff fails to present evidence to create a genuine issue of material fact with respect to essential elements of those claims.

At the conclusion of the R&R, Magistrate Judge Pepe advises the parties that any objection to the R&R must be filed within ten days of service upon them. (R&R at 14-15.) He further advises the parties that "[f]ailure to file specific objections constitutes a waiver of any further right of appeal." (*Id.*, citing *Thomas v. Arn*, 474 U.S. 140, 147-48 (1985); *Howard v. Sec'y of HHS*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947, 950 (6th Cir. 1981).) Neither party filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Pepe.

Accordingly,

IT IS ORDERED, that Defendants' motion for summary judgment and/or to dismiss is **GRANTED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:

Anthony Kinard
718 North Blackstone Street
Jackson, MI 49202

Cori E. Barkman, Esq.

Magistrate Judge Steven D. Pepe